

M. ROBERT PAGLEE

IBLA 82-684

Decided November 16, 1982

Appeal from the decision of the Montana State Office, Bureau of Land Management, rejecting competitive oil and gas lease offers M 54138 and M 54139.

Set aside and remanded.

1. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases:
Discretion to Lease

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

2. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases:
Discretion to Lease

Where competitive oil and gas lease high bids are not clearly spurious or unreasonable on their face and the record fails to disclose sufficient factual basis for the conclusion that the bids are inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bids. A justification memorandum that does not reveal the estimated minimum values for the parcels and the factual data on which the estimates were based is not sufficient to support rejection of the high bids for the parcels.

APPEARANCES: M. Robert Paglee, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

M. Robert Paglee has appealed the decision of the Montana State Office, Bureau of Land Management (BLM), dated March 9, 1982, rejecting his high competitive oil and gas lease bids, M 54138 and M 54139, for parcels 6 and 7 at the January 13, 1982, lease sale. n1

BLM rejected the bids based on a Minerals Management Service (MMS) recommendation that the bids were inadequate because they were lower than its presale evaluation of the parcels. A copy of a February 22, 1982, MMS memorandum explaining its recommendation was attached to the decision. n2 That memorandum states:

Tract 6 is about 1500 feet south of well number 15 in lease (M2060) section 29. The initial tested production for well 15 was 380 MCFPD and at \$2.80/MCF equals to \$1064 daily revenue. This well is GSI (Gas Shut In) waiting on sufficient production to facilitate installation of a pipeline to this area. The high bid for tract 6 was \$11.00 per acre or \$880 for the 80 acre tract.

Tract seven was divided into three maps, 7A, 7B, and 7C for simplicity.

The center of tract 7A is about 2000 feet west from gas well 1, in section 7 lease (M-16939). The initial tested production from well 1, was 814 MCFPD and at \$2.80/MCF equals to \$2279.20 daily revenue. This well is GSI.

1/ Both parcels are within an unnamed known geological structure in Blaine County, Montana. Parcel 6 consists of 80 acres and is the N 1/2 NE 1/4, sec. 32, T. 24 N., R. 20 E., Principal meridian. Parcel 7 consists of 400 acres in T. 25 N., R. 20 E., Principal meridian, described as follows: SE 1/4 SE 1/4, sec. 1; E 1/2 NE 1/4, sec. 12; SE 1/4 NE 1/4, E 1/2 SE 1/4, sec. 17; NE 1/4 NE 1/4, sec. 21; NW 1/4 NE 1/4, N 1/2 NW 1/4, sec. 22.

2/ This memorandum was the second one from MMS stating its recommendation. The first, dated Jan. 25, 1982, stated simply: "This office recommends the acceptance of all high bids for the above subject sale [of Jan. 13, 1982] except tracts 6 and 7. It has been determined that the high bids for parcels 6 and 7 are inadequate. The Economic Evaluation Section, Casper, Wyoming, has valued these lands much higher." To this the Chief of BLM's Minerals Adjudication Section responded:

"Our decision rejecting the bids will be based on your determination, and the bidder will have the right of appeal to the Interior Board of Land Appeals (IBLA). Since the record must be complete in the event of an appeal, we will need an explanation for the basis of your determination. IBLA has repeatedly held the record must disclose the factual basis for the conclusion that a bid is inadequate. A copy of one of these decisions is enclosed as an aid in furnishing same."

The center of tract 7B is about 1800 feet east from gas well 16 in section 16 (State lease). The initial tested production was 318 MCFPD and at \$2.80/MCF equals to \$890.00 daily revenue. This well is GSI.

The center of tract 7C is about 2500 feet south from gas well 1 in section 15 lease (M1914). The initial tested production was 974 MCFPD and \$2.8/MCF [sic] equals to \$2727.20 daily revenue. This well is GSI. The high bid for tract 7 was \$3.00 per acre or \$1200.00 for 400 acres.

Obviously, the high bids are not adequate and this office recommends the rejection of same.

Following receipt of the decision, appellant wrote various letters under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1976 and Supp. II 1978), requesting additional information from BLM and MMS. Some of this information forms the basis for his reasons for appeal.

Appellant urges that the rejection of his bids was discriminatory because his were the only bids rejected in the January lease sale and because some bids having a lower per acre value than his bids were accepted. He adds that his request for the presale evaluations of parcels 6 and 7 have been denied even though presale evaluations have been provided to other appellants in the past. Appellant argues that BLM's decision is arbitrary and capricious because the MMS report contained only conclusory statements as to the projected value of production from four shallow gas wells in adjoining sections. He notes that all of these wells have been shut-in for many years due to a lack of gas gathering lines and are surrounded by dry holes. Appellant provides several arguments why the MMS decision was in his view arbitrary and capricious and supporting the reasonableness of his bids.

[1] The Secretary of the Interior has discretionary authority to reject a high bid for a competitive oil and gas lease as inadequate. 30 U.S.C. § 226(b) (1976); 43 CFR 3120.3-1. This Board has consistently upheld that authority so long as there is a rational basis for the conclusion that the highest bid does not represent a fair market value for the parcel. Harry Ptasynski, 48 IBLA 246 (1980); B. D. Price, 40 IBLA 85 (1979); Frances J. Richmond, 29 IBLA 137 (1977). Departmental policy in the administration of its competitive leasing program is to seek the return of fair market value for the grant of leases, and the Secretary reserves the right to reject a bid which will not provide a fair return. Coquina Oil Corp., 29 IBLA 310, 311 (1977). See Exxon Co., U.S.A., 15 IBLA 345, 357-58 (1974).

MMS is now the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on MMS' reasoned analysis. L. B. Blake, 67 IBLA 103 (1982). When BLM relies on that analysis in rejecting a bid as inadequate, it must ensure that a reasoned explanation is provided for the record to support the decision. Southern Union Exploration

Co., 41 IBLA 81, 83 (1979). Otherwise, if the bid is not clearly spurious or unreasonable on its face, the Board has consistently held that the decision must be set aside and the case remanded for compilation of a more complete record and readjudication of the acceptability of the bid. Southern Union Exploration Co., *supra*; Charles E. Hinkle, 40 IBLA 250 (1979); Yates Petroleum Corp., 32 IBLA 196 (1977). The Board has elaborated on the reasons for this as follows:

[T]he appellant is entitled to a reasoned and factual explanation for the rejection of its bid. Appellant must be given some basis for understanding and accepting the rejection or alternatively appealing and disputing it before this Board. The explanation provided must be a part of the public record and must be adequate so that this Board can determine its correctness if disputed on appeal. Steven and Mary J. Lutz, 39 IBLA 386 (1979); Basil W. Reagel, 34 IBLA 29 (1978); Yates Petroleum Corp., 32 IBLA 196 (1977); Frances J. Richmond, 24 IBLA 303 (1976); Arkla Exploration Co., 22 IBLA 92 (1975).

Southern Union Exploration Co., 51 IBLA 89, 92 (1980).

On the present record we are unable to determine the correctness of the BLM decision on competitive bids M 54138 and M 54139 or the merits of appellant's arguments. The MMS memorandum is not adequate to indicate the fair market value or to make it "obvious" that appellant's bids are inadequate. This does not mean the Board will substitute its own judgment for that of the Department's experts in determining what is fair market value for the parcel, but rather that the Board will require sufficient facts and a sufficiently comprehensible analysis to insure that a rational basis for the determination is present.

In response to appellant's FOIA request for the presale evaluations of parcels 6 and 7, MMS stated:

[T]he provisions of the Freedom of Information Act explicitly preclude our furnishing any copies of and/or details surrounding our pre-sale minerals evaluations, as such data is often times either proprietary in nature or could effectively compromise the Federal Government's ability to receive fair market value at subsequent public lease sales.

(Exh. B; Appellant's Statement of Reasons). In Southern Union Exploration Co., 51 IBLA at 92-95, we addressed a similar assertion at length and rejected it, concluding that

[r]efusal to inform a good-faith appellant of the basis for the rejection of a high bid renders the right of appeal, which the Secretary has afforded, virtually meaningless. Regardless of whether or not an exemption is provided by the FOIA which the Department might invoke, we hold that, except to the extent that the release of certain information is prohibited by law, an appellant who has submitted a high bid, which is not clearly spurious,

must be informed not only of the estimated minimum values, but the subsidiary factual data which served as the predicate for the derivation of that estimate.

The Board also discussed the proper standard of what constitutes proprietary data, *i.e.*, information which, if disclosed, would do substantial harm to the competitive position of the outside source from which it was obtained and impair the Government's ability to obtain this type of information in the future, resulting in a detrimental impact on the oil and gas leasing program. *Id.* at 93. Although the disclosure of proprietary information is prohibited by law, this does not apply to data generated internally by MMS on the basis of facts known to it. *See e.g., L. B. Blake, supra.*

We find that the BLM decision in this appeal is deficient. It did not reveal to appellant the presale evaluations of parcels 6 and 7 or the estimated minimum values and the factual data on which they were based. Accordingly, we remand this case to BLM for readjudication of appellant's bids. In readjudicating the bids, BLM should consider the arguments presented by appellant in this appeal. If the bids are rejected again, BLM shall set forth the reasons for doing so completely, including the presale evaluations, so they may be addressed by appellant and considered by the Board.

Notwithstanding the foregoing, we wish to address certain of appellant's arguments on appeal and BLM need not address them in its readjudication of appellant's bids.

In attempting to establish the reasonableness of his bids, appellant compares them to bids made on other parcels in the same lease sale. Appellant also notes that there was only one other bid on parcel 6 and none on parcel 7 whereas bidding was heavy on other parcels and that other parties holding leases in the immediate vicinity did not bid on the parcels (Statement of Reasons at 1, 4). Appellant seems to suggest that, therefore, his bids must be a fair representation of market value for the parcels. We repeat, however, that the Department sets fair market value. Bids received on a parcel do not necessarily represent an accurate test of fair market value as bidders may consider other factors in making their bids. Furthermore, the bids received and the fair market evaluations for the other parcels at the January lease sale have no bearing on the value of parcels 6 and 7. Each tract is evaluated individually and one may clearly be more valuable than another for many reasons. *Harry Ptasynski, supra* at 249.

Appellant also compared parcels 6 and 7 with various nearby simultaneous oil and gas leases. He calculated an "Income Per Acre, Yield" based on his bids plus rentals for parcels 6 and 7 and the total filing fees plus rentals for the simultaneous leases (Statement of Reasons at 5). A comparison of competitive leases on similar parcels in the same area as the leases at issue might be an appropriate factor in projecting fair market value. *See L. B. Blake, supra* at 107. However, competitively bid leases are fundamentally different from and simply not comparable to simultaneous noncompetitive leases, as the former involve lands in a known geological structure of a producing oil and gas field and the latter do not.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Montana State Office is set aside and the case remanded for further action consistent with this opinion.

Will A. Irwin
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Gail M. Frazier
Administrative Judge

